

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

July 23, 2012

Jeffrey D. Horsey
7301 N. Union Church Road
Milford, DE 19963

RE: Jeffrey D. Horsey v. Allen's Family Foods
C.A. No. S11A-10-005 ESB

Date Submitted: April 2, 2012

Dear Mr. Horsey:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's denial of your claim for unemployment benefits. You were employed as a truck driver by Allen's Family Foods for approximately 17 years. Because you are a diabetic and take insulin, you have to have a medical waiver from the Federal Motor Carrier Safety Administration to drive a truck. You obtained your last medical waiver in 2009. It expired on June 6, 2011. When your medical waiver expired, Allen's prohibited you from driving a truck until you obtained a new medical waiver. You asked Allen's to find you alternative employment, but Allen's had no such work available.

You filed a claim for unemployment benefits on June 9, 2011. The Claims Deputy determined that you were disqualified from the receipt of unemployment benefits due to your inability to work. You appealed the Claims Deputy's decision to the Appeals Referee. The Appeals Referee affirmed the decision of the Claims Deputy, but modified it, holding that you were discharged from work for just cause, reasoning that it was your responsibility to obtain the medical waiver and that your failure to do so constituted just cause for your termination. The Board affirmed

the Appeals Referee's decision for the same reasons. At the time of Board hearing, you had still not received a new medical waiver from the Federal Motor Carrier Safety Administration. You filed an appeal with this Court, arguing that (1) you have no control over how long it takes letters to be processed by the postal service, and (2) you now have a current medical waiver to drive a truck.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The Court must determine whether the Board's findings and conclusions are free from legal error and supported by substantial evidence in the record.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁴ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁵

DISCUSSION

Delaware law states that an individual will be disqualified from the receipt of unemployment benefits "for the weeks in which the individual was discharged from the individual's work for just

¹ *Unemployment Insurance Appeal Board v. Martin*, 431 A.2d 1265, 1266 (Del. 1981).

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.1986), *app. disp.*, 515 A.2d 397 (Del. 1986)(TABLE).

³ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁴ 29 *Del.C.* § 10142(d).

⁵ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

cause in connection with the individual's work..."⁶ The Board found that it was your responsibility to maintain the necessary documentation required in order for you to perform the essential function of your job, which was to drive a truck. You did not maintain the required documentation, and as a result, you become unable to work. The Board also found that Allen's was not required to provide alternative employment for you while you awaited the arrival of your medical waiver. By not providing the necessary documentation so you could continue performing your job, the Board held that Allen's had just cause to discharge you.

According to 19 *Del.C.* § 3314(2), a claimant is not eligible for benefits when he or she is terminated from employment for "just cause." "Just cause" has been defined by this Court as a "wilful or wanton act in violation of either the employer's interest, or of the employee's duties, or of the employee's standard of conduct."⁷ A wilful or wanton act requires the employee to be "conscious of [his] conduct or recklessly indifferent to its consequences."⁸

You were well aware of the fact that you have to have a current medical waiver in order to drive a truck. You had previously been through the process of obtaining a medical waiver in 2009. During that process, you were forced to sit out of work for awhile because you did not obtain your medical waiver in time. Your act of not renewing your medical waiver prior to the expiration of it demonstrates a reckless indifference to the consequences of not doing so in time. The responsibility of renewing the medical waiver rested solely with you and not Allen's. Without your medical waiver, you were unable to perform your job duties. The fact that you have no control over the postal service

⁶ 19 *Del.C.* § 3314(2).

⁷ *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967).

⁸ *Coleman v. Department of Labor*, 288 A.2d 285, 288 (Del. Super. 1972).

is of no consequence. You should have given yourself enough time to get the medical waiver. Similarly, the fact that you now have the medical waiver is of no consequence. You did not have it when it was required. The Board's decision that you are disqualified from the receipt of unemployment benefits is in accordance with the applicable law and is supported by substantial evidence in the record.

CONCLUSION

The Unemployment Insurance Appeal Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/e/ E. Scott Bradley

E. Scott Bradley

EBS/sal

cc: Allen's Family Foods
UIAB
File